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CURRENT TOPICS

Recent Legislation

AMONG the many Acts of Parliament which have reached the Statute Book in the last month, some half dozen or so are of special interest to lawyers, either for their general subject-matter or because they contain some particular provision affecting day-to-day practice. To take them alphabetically, they include the Advertisements (Hire-Purchase) Act, 1957, which comes into operation on 1st January, 1958, and will then regulate the information required to be contained in advertisements of goods for disposal by way of hire-purchase or credit-sale; the Cheques Act, 1957, coming into force on 17th October next and designed to obviate the need for endorsement of certain cheques and other instruments; the Electricity Act, 1957, which contains in ss. 31 to 37 further powers and restrictions regarding the exercise of electricity boards' functions over land not belonging to them, particularly as to the placing of electric lines (these sections are already in force); the Judicial Offices (Salaries and Pensions) Act, 1957, which is in force and *inter alia* increases the salaries of the recorders of Liverpool and Manchester, of county court judges and of metropolitan police magistrates; the Legitimation (Re-registration of Birth) Act, 1957, which came into operation on the date of its passing—17th July last—and extends the provisions for the registration of births of persons legitimated *per subsequens matrimonium* to cover all persons recognised by English law to have been so legitimated, whether or not by virtue of the Legitimacy Act, 1926 (it is, however, important to note that where the legitimating marriage took place before 17th July, 1957, information must be furnished to the Registrar-General by 17th October next for purposes of the Schedule to the Act of 1926); and the Maintenance Agreements Act, 1957, which comes into force on 17th August and empowers the court to vary the financial arrangements concerned in a maintenance agreement or to insert financial provisions in a separation agreement containing no such provisions.

Legal Aid and Public Funds

"IT is good news," commented a leading article in the *Evening Standard* of 6th August, "when The Law Society reports a continued decline in the number of applications for legal aid. In 1951–52 there were 53,000 applications, and in 1955–56 there were fewer than 40,000." This, said the writer, denoted "less pain and affliction, more happiness and satisfaction." Moreover, he wrote, it should result in a saving of public funds. In fact, however, there has been

CONTENTS

a rise in public expenditure of £100,000, of which £85,000 is due to administration costs. There have been, the *Standard* writer contended, fewer and fewer cases, and more and more secretaries, clerks and officials. He also remarked that the percentage of cases which end in success is dropping, and that every now and then a judgment is obtained which is without fruit, so that in the end the public pays the fees for both contestants. Most lawyers will applaud the common sense of the article, and will agree that any "fantasies and extravagances" of legal aid must be eliminated. The only criticism which we would offer is that it must not be supposed that legal aid committees, any more than a practising litigation solicitor, offer any guarantee of success in putting forward a case as fit for arbitrament by the courts, or that fluctuations in the figures of successes necessarily have any meaning at all.

Local Land Charges Rules Amended

THE Local Land Charges (Amendment) Rules, 1957 (S.I. 1957 No. 1437), will come into operation on 6th September next. As foreshadowed at p. 602, *ante*, they provide for matters under s. 4 of the New Streets Act, 1951 (Amendment) Act, 1957, to be registered in Pt. IV of the local land charges register; but more important to the practitioner, they amend r. 15 (5) of the 1934 rules to read: "A separate requisition for search shall be made in respect of each parcel of land in respect of which a search is requested, except where for the purpose of a single transaction a certificate is required in respect of two or more parcels of land which have a common boundary or are separated only by a road, railway, river, stream or canal." The old rule had required separate requisitions except where a certificate was required in respect of "two or more *contiguous* parcels of land" and the new rule is therefore both more precise and, in theory at least, somewhat wider.

Coal Mining Subsidence

THE Coal Mining (Subsidence) Act, 1957, which received the Royal Assent on 31st July, requires the National Coal Board to (i) remedy damage to property caused by coal mining subsidence, or make a payment instead; (ii) provide or pay for temporary accommodation when houses are so badly damaged by coal mining subsidence that people are rendered homeless; (iii) pay damages if any one should be killed or seriously and permanently disabled by an accident caused by coal mining subsidence and there is no other claim for damages. The properties covered are land, buildings, structures (including roads, railways, aircraft runways, etc.) and works such as sewers, drains and other service lines and pipes which suffer damage from coal mining subsidence after the 31st July, 1957. The provisions of the Act are, however, retrospective to 1st January, 1956, in the case of damage to dwelling-houses which are not covered by the Coal Mining (Subsidence) Act, 1950. The National Coal Board are required to undertake the remedial works needed to make these properties reasonably fit for their use, or not less fit for that use than they were at the time the damage occurred. The Board may, and in certain circumstances must, choose instead to make payments towards the costs incurred by some other person in executing works in connection with the damaged property. Where the cost of remedial work would exceed the depreciation in the value of the property caused by the damage, the obligation of the Board is limited to paying the amount of depreciation. There are special provisions for the immediate execution of emergency works and for the execution of works likely to prevent damage from occurring or to stop it getting worse. Special provision is also made for dealing with land drainage systems maintainable by a drainage authority in England and Wales. When a house is rendered uninhabitable by subsidence damage occurring after the 31st July, 1957, the Board are required to provide temporary alternative accommodation until the house is repaired or, if the house is not likely to be repaired, for long enough to give the people rendered homeless the opportunity to find a new home. When necessary, the Board also have either to remove and store the furniture themselves or to pay for its removal and storage. When a person is killed or seriously and permanently disabled by an accident caused by the happening of coal mining subsidence damage after the 31st July, and there is no other claim for damages, the Board are required to pay damages. The Board are not liable if the person injured was a trespasser at the time of the injury, and their liability may be reduced or eliminated altogether in cases of contributory negligence.

Inquest Procedure: Right to Examine Witnesses

THE Hammersmith coroner refused permission at an inquest on 7th August to a solicitor representing a Member of Parliament to examine witnesses. The coroner said that he had to be satisfied that the Member of Parliament was a properly interested person. The solicitor stated that there was no one else at the inquest watching the interests of the next of kin, and that it would not be unreasonable to put the Member of Parliament in that position. He said that the point at issue might be whether the deceased, who was twenty years old, was kept an unnecessarily long time in prison before being sent to a Borstal institution, and whether that had something to do with the fact that he had committed suicide. The coroner replied that the matter was regulated by r. 16 of the Coroners Rules, 1953, and said that it was not suggested that the Member of Parliament came within any of the categories of those who were indisputably properly interested persons. If an M.P. wished to raise matters on prison administration, he could do so by addressing himself to the Secretary of State, or he could use other Parliamentary opportunities. The solicitor was, like everybody else, entitled to watch the proceedings and be present in court.

Claims against I.G. Farbenindustrie

WE are indebted to the August issue of the *Law Society's Gazette* for a note of the final date before which, according to a Federal German Law which came into force on 1st June, 1957, claims against I.G. Farbenindustrie must be filed, by writing to I.G. Farbenindustrie in Liquidation, Frankfurt-am-Main, Bockenheimer, Landstrasse 53 (Creditors' Filing Agency), Germany. The name and address of the claimant and a short statement of the factual basis of the claim should be sent. The claims to which the law applies are those which have arisen in respect of financial and commercial transactions, and also in respect of slave labour of concentration camp inmates at a plant of the company or any of its subsidiaries (especially if performed in the Auschwitz Area). It does not apply to bonded debts or debts which have already been made known to the company. Further information may be obtained from the German Embassy, 21–23 Belgrave Square, London, S.W.1.

NEW POLICY TOWARDS CONTROLLED COMPANIES

THE powers conferred upon Special Commissioners under s. 245 of the Income Tax Act, 1952, to make sur-tax directions against "controlled" companies have abruptly been brought back to life from their half-slumber by a written reply of the Chancellor of the Exchequer of 1st August this year. The Chancellor was asked for how long he proposed to continue the practice of not issuing sur-tax directions against trading companies which maintain a dividend rate accepted as reasonable for periods prior to June, 1947, even though their profits have since increased. In his reply the Chancellor stated:—

> "I have come to the conclusion that this practice, which was announced by my predecessors in June, 1947, and July, 1948, should now be discontinued. In dealing with accounts made up for periods ending after the date of this answer, the Special Commissioners will not regard themselves as bound by these statements, but will make directions in appropriate cases by reference to the statutory test—namely, that the company has failed to distribute a reasonable part of its income from all sources, having regard to the current requirements of its business and to such other requirements as may be necessary or advisable for the maintenance and development of that business."

This reply is likely to assume equal importance to that of his predecessor, Sir Stafford Cripps, on 22nd July, 1948 (454 H. of C. Official Report (Written Answers), col. 55), which was to the effect that no direction would be made in a *bona fide* case against trading companies which had maintained the same level of dividends as for previous periods even if the profits had risen; and if for special reasons no distribution was made for any period prior to June, 1947, and no direction was made in respect of these periods then the continuance of this policy would not be challenged. This line was only followed in *bona fide* cases and the danger of a sur-tax direction had always to be faced, where money was withdrawn from a company in the guise of capital, or when a "controlled" company was sold or where any tax-avoidance device was employed. Similarly a controlled investment company was not covered by Sir Stafford Cripps' reply and remained subject to an automatic sur-tax direction.

Section 245 of the Act provides that if, in order to avoid the payment of sur-tax, a company abstains from making a reasonable distribution of income within a reasonable time, the Special Commissioners may direct that for the purposes of assessment to sur-tax the income of the company shall be deemed to be the income of the members and be apportioned amongst them.

Companies affected

The application of s. 245 is limited to "controlled" companies in the sense defined by s. 256, i.e., those capable of being controlled by not more than five persons. Control here is not restricted to control immediately exercised, but includes any *power* to exercise or acquire control or the preponderance of share capital or voting power. Relatives within the degree of husband, wife, ancestor, lineal descendant, brother or sister are to be reckoned as a single person, as are nominee and nominor, and partners and beneficiaries under a trust.

A subsidiary of a company which is not itself liable to a sur-tax direction is exempt and so is any public company whose equity shares are held beneficially by the public to the extent of 25 per cent. of the voting power *and* which are quoted *and* dealt in on a stock exchange in the United Kingdom.

Onus of proof

This being a highly penal section, it has always been on the Crown to show "at the end of the day" that the company has unreasonably withheld a distribution (*Thomas Fattorini (Lancashire), Ltd.* v. *Inland Revenue Commissioners* (1942), 24 Tax Cas. 328). The scope of this decision was widened and clarified in two more recent cases, dealing with what on the face of it seems a procedural point, but one which is in practice of the greatest importance, viz., whose right or duty it is to begin. Generally in tax appeals before the commissioners it is for the taxpayer to open the case. This practice was for the first time challenged by the taxpayer as far as appeals against sur-tax directions are concerned in *Inland Revenue Commissioners* v. *Transport Economy, Ltd.* (1954), 35 Tax. Cas. 601. In that case it was common ground that the facts as emerging from the accounts were not by themselves sufficient to enable the Special Commissioners to determine whether or not a sur-tax direction should have been made. The Inland Revenue did not intend to call any evidence but relied on the general procedure for the taxpayer to open the case and show that the direction ought not to have been made. On behalf of the taxpayer the point was taken that, as it is the onus of the Inland Revenue to justify the direction, it is their duty to begin. The Special Commissioners discharged the direction. Upjohn, J., in the Chancery Division upheld their decision on the following grounds: the onus to justify the direction is on the Crown (*Fattorini* case, *supra*). If this burden is not discharged they cannot succeed. Hence, on general principles, it is their right or—as it proved to be in this case—their duty to begin. This should, however, not prevent the taxpayer from opening the case where the parties agree that this is the more convenient course to follow in a particular case. The Court of Appeal upheld the decision on different grounds, viz., that the Revenue had admitted before the Special Commissioners that the facts before them were not sufficient to justify the direction and they had elected not to adduce further evidence. Evershed, M.R., refused to pronounce on the principle laid down by Upjohn, J., as being an academic point on which the court ought not to express any views.

In the more recent case of *Inland Revenue Commissioners* v. *White Brothers, Ltd.* (*in liquidation*) [1956] T.R. 167; 49 R. & I.T. 432, Upjohn, J., took the opportunity to elaborate on and limit the application of the principle he had laid down in the *Transport Economy* case, *supra*. The facts of the case were as follows: the respondent company had sold in 1950 all its assets and liabilities except liquid resources, investments and loans to directors amounting to a total of approximately £63,000 to a new company of the same name formed for this purpose. The respondent company had made substantial profits for the years ending 30th April, 1947, 1948, 1949 and 1950, and had not declared any dividends in respect of these periods. Sur-tax directions were made in respect of these periods. At the hearing before the Special Commissioners the Inland Revenue submitted evidence as to the respondent company's accounts and balance sheets from which these facts emerged. At the conclusion of the Crown's case the respondent company submitted that there was no case to

answer. The Special Commissioners upheld this submission. On appeal Upjohn, J., sent the case back for a rehearing. In the course of his judgment the learned judge made the following points. In cases where the onus of proof is on the Crown, and since the *Transport Economy* case, *supra*, the practice persists for the Crown to open in such cases, the commissioners should not listen to a submission of the taxpayer of no case to answer, but ask him if he elects to call evidence. If he elects not to do so and the commissioners or the court have come to the conclusion that the Crown has discharged the onus, he cannot complain of the consequences and it would then be too late for him to ask for leave to call evidence. The degree of proof in such cases is that in civil and not that in criminal proceedings, i.e., the tribunal has only to be satisfied on the balance of probabilities but not beyond all reasonable doubt that there has been an unreasonable withholding.

Distributions

A distribution for the purposes of this section must be in a form to constitute *income for sur-tax purposes* of the recipient member. Thus the following are *not* distributions within the meaning of s. 245 :—

(*a*) Profits distributed as assets in a winding up (*Inland Revenue Commissioners* v. *Burrell* (1924), 9 Tax. Cas. 27).

(*b*) A mere declaration of dividends unaccompanied by payment (*Morris Securities, Ltd.* v. *Inland Revenue Commissioners* (1940), 23 Tax. Cas. 525).

(*c*) A cheque for dividends endorsed and returned as a loan to the company (*Inland Revenue Commissioners* v. *Marbob, Ltd.* (1939), 22 Tax Cas. 580).

(*d*) A distribution of bonus shares (*Inland Revenue Commissioners* v. *Blott* (1921), 8 Tax. Cas. 101).

What constitutes a reasonable distribution is a question of fact depending on all the circumstances of the case.

Some guidance can be had from the reply of Mr. Thorneycroft, *supra*, viz., that the Special Commissioners when deciding whether to issue a sur-tax direction or not should pay regard to the current requirements as well as to those necessary or advisable for the maintenance and development of the business. Any legitimate commitments, or if the company has to meet strong competition, are all factors to be taken into account. On the other hand, s. 246 (2) of the Act disallows the exclusion from the income available for distribution of certain expenditure, notably that for acquiring the initial assets or for repayment of loans made for this purpose. This is of particular importance where a sole trader or partners desire to turn their business into a limited company, leaving part of the purchase price on loan to the company to be repaid out of future profits. Where such repayments are unaccompanied by a reasonable distribution of profits the danger of a sur-tax direction is real.

On a winding up the income of a company for the periods immediately preceding the winding up is deemed to be available for distribution (s. 253 of the Act). Although it was held in *A. & J. Mucklow, Ltd. (in liquidation)* v. *Inland Revenue Commissioners* (1953), 35 Tax Cas. 251, that this does not authorise an automatic sur-tax direction, it will be very difficult for a company to resist a direction on the ground that a non-distribution of income for the last accounting period is reasonable.

Consequences of a direction

If a sur-tax direction is made the *whole* of the income and not merely a reasonable part of it is deemed to be distributed amongst members (*Colville Estate, Ltd.* v. *Inland Revenue Commissioners* (1930), 15 Tax. Cas. 485). The Inland Revenue can enforce payment of the tax arising out of the direction either from the members or from the company. If, following a direction, sur-tax has been paid on the company's profits, these are exempt from sur-tax when later distributed. Furthermore, if the income from all sources of a company has been apportioned under s. 245 to its members, who are all individuals, then the profits to which the sur-tax direction relates are exempt from profits tax (Finance Act, 1947, s. 31 (3)). In fact this may sometimes involve a tax saving, particularly where the members are in the lower sur-tax range or in the last chargeable accounting period, when by virtue of s. 35 (1) (*c*) of the Finance Act, 1947, the total amount of accumulated profits becomes liable to a distribution charge. This was well illustrated in the recent case of *R.* v. *Income Tax Special Commissioners; ex parte Linsleys (Established* 1894), *Ltd.* [1957] 2 W.L.R. 654; *ante*, p. 318 (C.A.), where an investment company applied successfully for an order of mandamus against the Special Commissioners, who had refused to make a sur-tax direction.

Protection of taxpayer

It is open to the directors of a company against which a sur-tax direction has been made to make a statutory declaration accompanied by a statement of facts and circumstances on which it is based to the effect that there has not been and will not be any avoidance of sur-tax by withholding a reasonable distribution to members. If this is accepted the sur-tax direction is dropped (s. 251 of the Act).

It is also open to the company to apply for a sur-tax clearance for any accounting period by submitting accounts and a report of the directors together with any relevant information. The Special Commissioners have then to decide either to make a direction within a fixed period or their power to do so will lapse. That is a particularly useful procedure where the sale of the business is contemplated (s. 252 of the Act).

Likely effect of new policy

What are proprietors of the many "controlled" companies going to do to minimise the effect of the new policy announced by the Chancellor of the Exchequer? They are obviously going to follow a more liberal dividend policy in the hope of warding off a direction, which would make the whole of the profits liable to sur-tax.

Others may enlarge the membership to take it outside the scope of s. 245 or, in suitable cases, seek a quotation on a United Kingdom stock exchange and place a sufficient number of shares with the general public.

In some cases, particularly where informal arrangements with a non-controlled company already exist, the link may be made more formal by allotting a sufficient number of shares to the non-controlled company to make the company a subsidiary of the non-controlled company.

MAX ENGLARD.

Mr. John Sherwood Stephenson, solicitor, of Newcastle-upon-Tyne, was married on 29th July, at Heddon-on-the-Wall, to Miss April Barrett, of Heddon-on-the-Wall.

Mr. John David Swatland, solicitor, of Tunbridge Wells, was married on 20th July, at Rusthall, to Miss Ann Hermione Idenden Betts, of Tunbridge Wells.

URGENT INJUNCTIONS IN VACATION

IT is perhaps one of life's little ironies that problems seem often to arise at the least convenient time. A reader of this journal has adverted to the question of the granting of urgent injunctions during a vacation and when the firm's litigation managing clerk is himself away on holiday. It may, therefore, be useful to give some indication of "the drill."

County court

The county court has a limited jurisdiction to grant injunctions by way of supplementary relief, but injunctions are not common there and interim injunctions are rather rare. It would seem that no special arrangements are generally made to deal in vacations with urgent applications, but where the county court offices remain open it is sometimes possible for the judge, or some other judge, to deal with the application. If an injunction cannot be obtained in the county court, it may be appropriate to institute proceedings in the High Court and obtain the protection of an injunction there, and then later, if it is found that the trial could more conveniently take place in the county court, application may be made for a transfer of the case to the county court.

High Court: vacation arrangements

In the High Court, the fact of there being a vacation does not prevent the obtaining of an injunction expeditiously. During the Long Vacation, two vacation judges are available, and usually one takes vacation work in August and the other the work in September. It is customary for the vacation judge to sit in court and chambers on certain pre-arranged days for the purpose of dealing with vacation business, that being, to quote the words of Ord. 63, r. 11, of the Rules of the Supreme Court, "all such applications as may require to be immediately or promptly heard." Even at other times he may be available in court or at chambers. In other vacations, it is not usual to have pre-arranged sittings in court, but a judge is available, and may have arranged to sit on one or more days as judge in chambers.

Moreover, in cases of real urgency, the judge may be approached personally at his home or wherever he may be staying. The notices about the arrangements which have been made for dealing with vacation business which are published before each vacation point out what should be done in those cases. The address of the judge is obtainable at Room 136, Royal Courts of Justice. Application to him may be made by prepaid letter, accompanied by the brief of counsel, office copies of affidavits in support of the application, and a minute on a separate sheet of paper signed by counsel of the order he may consider the applicant entitled to, and also an envelope sufficiently stamped, capable of receiving the papers, addressed as follows: "Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.2." In cases of the extremest urgency the communication may be by telephone, but, as the notices state, "telephonic communication to the judge is not to be made except after reference to the officer on duty at Room 136."

Chancery Division

When an injunction is the main relief sought, it is usual to institute the proceedings in the Chancery Division. In that division, as a general rule, an application for an interlocutory injunction, whether *ex parte* or on notice, is made by motion, supported by an affidavit or affidavits. An affidavit used as evidence in support should be filed and an office copy produced at the hearing of the application; or, if it has not been possible to do this before the application, an undertaking should be given to do this forthwith and to produce the office copy to the registrar on the passing of the order.

Queen's Bench Division

In the Queen's Bench Division it is the practice to apply to the judge in chambers by summons, supported by an affidavit or affidavits, unless an immediate injunction is required and the application is *ex parte*. An *ex parte* application is made on affidavit. Affidavits used in evidence in this division are not usually filed before the hearing.

Issue of writ

Before any relief can be granted, whether *ex parte* or otherwise, there have to be proceedings in existence, and the first step to be taken is, therefore, the issue of the writ. But in cases of quite exceptional urgency, and where, for instance, the court offices are shut, the application for *ex parte* relief can be made before the issue of the writ; but in that case the writ should be ready for issue and it should be retained by the court and transmitted to the Central Office for issue as on the day on which custody was assumed by the court. After the writ has been issued, the affidavit in support of the application (which, in strictness, should have been headed: "In the matter of an intended action . . .") should be resworn and filed in the action.

It should be noted that the affidavit in support of the application for an injunction should not (except in such a case as has just been mentioned) be sworn before the issue of the writ. But if it has been so sworn, that is not necessarily fatal. The affidavit can be used, upon an undertaking to have it resworn and duly filed.

When a Chancery application is to be included in the Judge's Paper in the Long Vacation, the general requirements prescribe that there shall be left with the cause clerk in attendance at the Chancery Registrar's Office, Room 136, Royal Courts of Justice, before 1 o'clock, two days previous to the day on which application to the judge is intended to be made: (1) Counsel's certificate of urgency or note of special leave granted by the judge; (2) two copies of the notice of motion, one bearing a 5s. impressed stamp; (3) two copies of the writ and two copies of pleadings (if any); and (4) office copies of affidavits in support and in answer (if any).

The order

An urgent order for an injunction obtained in the Chancery Division should be bespoken in the Registrar's Chambers at once so that it can be drawn up and passed and entered on the same day. But in all cases, if time is all-important, the defendant should, if possible, be notified immediately the injunction has been granted and then the order should be subsequently served upon him.

When a plaintiff gets an interlocutory injunction he is required to give an undertaking in damages, and if it turns out later that he was not entitled to the relief, an inquiry as to the damages to the defendant may be directed.

The practitioner who is seeking to obtain an urgent injunction for his client would be well advised to observe the prescribed requirements, but orders have on rare occasions been made where, for good reason, it has not been possible to comply with the requirements precisely.

P. H.

A Conveyancer's Diary

TRESPASS OR NUISANCE?

MAITLAND's famous aphorism, " The forms of action we have buried, but they still rule us from their graves," was given an almost equally famous gloss by the late Professor Winfield; it may be questioned, he said, whether the forms of action have not been buried alive. When certain types of wrong to land have to be considered, the distinction between an action for trespass and an action upon the case is certainly very much a live problem. Trespass imports its own damage. In nuisance, damage has to be alleged and proved (often no easy matter) before the tort can be shown to have been committed. A recent case, *Kelsen* v. *Imperial Tobacco Co. (of Great Britain and Ireland), Ltd.* [1957] 2 W.L.R. 1007, and p. 446, *ante*, neatly illustrates the point. (This case was the subject of an article by another contributor at p. 528, *ante*, a few weeks ago; but the particular point which I want to bring out was only lightly touched upon then.)

The plaintiff was the estate owner of a shop, which was a single-storey structure. The adjoining premises were two storeys higher, and on these adjoining premises the defendants maintained an advertising sign which was fixed flush to the wall of these premises but protruded a few inches from the wall into the airspace over the plaintiff's shop, which, on the well known principle *cujus est solum ejus est usque ad coelum et ad inferos*, admittedly belonged to the plaintiff. To the plaintiff's action for damages in trespass and a mandatory injunction to pull down the sign the defendants pleaded, *inter alia*, that a mere invasion of a superincumbent airspace constituted a nuisance only, not a trespass, and that nuisance did not lie in this case because it was common ground that the presence of the sign did the plaintiff no pecuniary damage.

The earlier cases

This question of whether the invasion of the airspace over another's land constitutes trespass or nuisance is an old one, on which the authorities do not speak with one voice. The earliest usually cited is *Pickering* v. *Rudd* (1815), 4 Camp. 219, in which Lord Ellenborough, on facts indistinguishable from those in *Kelsen's* case, stated the law picturesquely and (as we now may think) wrongly, in the following words: " If this board overhanging the plaintiff's garden be a trespass, it would follow that an aeronaut is liable to an action *quare clausum fregit* at the suit of the occupier of every field over which his balloon passes in the course of his voyage. Whether the action may be maintained cannot depend upon the length of time for which the superincumbent air is invaded. If any damage arises from the object which overhangs the close, the remedy is by an action on the case " (i.e., in nuisance).

This sympathy for the problems of the aeronaut is oddly uncharacteristic both of the man who evinced it and of the place and time in which the judgment in which it appears was delivered. Of Lord Ellenborough, the Dictionary of National Biography says that his fame as a legislator depends for the most part on the Act known by his name (43 Geo. 3, c. 58) which created ten new capital felonies. And one would not look to the Court of King's Bench in Waterloo year for any indulgence for an activity like aeronautics, then novel, frivolous and in origin French.

The correctness of Lord Ellenborough's view was doubted by the high authority of Blackburn, J., in *Kenyon* v. *Hart* (1865), 6 B. & S. 249, and in *Gifford* v. *Dent* [1926] W.N. 336 Sir Mark Romer, J., held without equivocation that the projection of a sign into the airspace over the plaintiff's land constituted a trespass. That decision, McNair, J., observed in his judgment in *Kelsen's* case, has been recognised by the text-books as stating the true law, and when in 1920 legislation was deemed necessary to negative the action which might otherwise arise by the passage of an aeroplane over land, the action was described as one of trespass or nuisance. McNair, J., felt no difficulty in preferring *Gifford* v. *Dent* to Lord Ellenborough's view of the law; the plaintiff was held to be entitled to succeed without proof of damage.

Kelsen's case

This is a useful decision. *Gifford* v. *Dent* was shortly reported, and this is the first case in which the arguments in favour of the two respective views are considered at length and the earlier view is decisively rejected. It will make it easier in practice to deal with this kind of invasion of rights quickly and cheaply by moving for an injunction for the removal of the intruding objects by way of interlocutory relief, a form of proceeding which, if successful, so often constitutes both the beginning and the end of an action, but which is a practical possibility only if the defendant is unable to set up and rely upon some obscurity in the law. And present circumstances are on the whole favourable to the commission of this kind of tort. Overhanging advertising signs abound, and the currently popular operation of dividing buildings horizontally produces situations in which any extension of any one of the divided parts of the building is very likely to lead to the invasion of the airspace over one of the others.

The "tree roots" cases

In view of the way in which *Kelsen's* case was decided, there is no affinity between it and another recent decision, which, however, being also concerned with a wrong to land, may without undue violence to such unities as this Diary has ever possessed be shortly mentioned here. In *Davey* v. *Harrow Corporation* [1957] 2 W.L.R. 941, and *ante*, p. 405, the plaintiff claimed damages for injury to his house caused by the roots of trees growing on the adjoining land of the defendants. One of the points which the defendants sought to make was that an encroachment such as was complained of, by roots or boughs of trees, could constitute a nuisance for which the owner of the land upon which the trees grew would be made liable, but only if it were shown that the defendant had himself planted the tree or trees in question.

This argument was based on a case well known to the reader of students' text-books on the law of tort, *Crowhurst* v. *Amersham Burial Board* (1878), 4 Ex. D. 5. In that case, the defendants had planted a yew tree which penetrated the boundary between the parties' lands to the plaintiff's land, where the plaintiff's horse ate some of its leaves and as a result died. It was argued in *Davey's* case by the defendants that *Crowhurst's* case had been decided on the principle of *Rylands* v. *Fletcher*, i.e., the escape of a dangerous thing from the land of a defendant who had for his own convenience placed it there, and from that that it was an essential ingredient of liability in all these cases that the defendant should have placed the offending object on his land. This the plaintiff could not have proved in *Davey* v. *Harrow Corporation*. But as Lord Goddard (who delivered the judgment of the Court of Appeal in this case) pointed out, the principle of

Rylands v. *Fletcher* was no doubt a simple ground for finding liability in *Crowhurst's* case; it did not, however, follow from that that on facts of the kind alleged an action for nuisance could not also exist. Cases later than *Crowhurst's* case had established, in his view, that such an action existed, and that there was no distinction for this purpose between trees which had been planted by the defendant and trees which were self-sown. So the process, begun in *Lemmon* v. *Webb* (the usual reference is to the decision of the Court of Appeal in that case, at [1894] 3 Ch. 1), of providing a remedy for the owner or occupier of land which is damaged by the encroachment of his neighbour's trees has advanced another step, and here again the gradual clarification of the law by the judicial elimination of potential defences should make the rapid and economical assertion of the damaged owner's rights easier in the future.

"A B C"

Landlord and Tenant Notebook

MEANING OF "PREMISES"

In the course of his judgment in *R.* v. *Adamson, The Times*, 16th July, Goddard, L.C.J., is reported to have said that "'premises' means 'premises'." Divorced from its context, such a statement invites comparison with observations made by the learned Lord Chief Justice a few years ago in *Gardiner* v. *Sevenoaks Rural District Council* [1950] 2 All E.R. 84; 94 Sol. J. 385: "There is no doubt that from time to time the word 'premises' has been given different meanings, either extended or more restricted." I do not suggest that there is necessarily a contrast; but, taken by itself, "'premises' means 'premises'" would be rather over-simplifying the question.

Original meaning

Editors of text-books are often loath to discard obsolete matter, and most of us will have read (and possibly forgotten) that all that precedes the habendum in a properly drawn lease—date, names and descriptions of parties, recitals (if any), consideration, operative words or words of demise, description of parcels and any reservations and exceptions—is called "the premises." A statement to that effect can be found in Sheppard's Touchstone of Common Assurances and, etymologically, "premises" does mean "things mentioned before." But etymology is a poor guide; no subscriber to this paper expects an issue a day. In *County Hotel and Wine Co., Ltd.* v. *London and North Western Railway Co.* [1918] 2 K.B. 251 McCardie, J., trying the case at first instance, recognised two distinct meanings of the word "premises." One of the questions was whether a deed of assignment assigning "all that piece of land comprised in and demised by the said indenture of lease of . . . and all and singular other *the premises* comprised in the said," etc., transferred to the assignee the benefit of an option to rent refreshment rooms at a railway station adjoining the "piece of land" (site of a railway hotel). Holding that it did not, the learned judge said: "I think that the word 'premises' in that deed refers to the physical subject-matter of the lease, that is, land and buildings . . . The word 'premises' may sometimes mean all the foreparts of the deed antecedent to the habendum, that is, the premises or preceding parts of the deed . . . Or it may mean the thing demised or granted by the deed. The meaning of the word must depend on the language actually employed in the deed and the relevant context. Upon the whole (though not without doubt) I come to the conclusion that in the deed of 1866 the word 'premises' is employed as indicating the physical subject-matter of the demise."

In statutes

When Acts of Parliament employ the word it is always in the "physical subject-matter" sense. Sometimes an interpretation section helps to define the meaning, but not invariably. A good example of judicial interpretation was afforded by *Metropolitan Water Board* v. *Paine* [1907] 1 K.B. 285, which decided that a builder engaged in developing a site was not entitled to the benefit of provisions obliging undertakers to provide a supply of water, contained in the East London Waterworks Act, 1853. By s. 79 of that statute they were bound to do so "at the request of the owner or occupier of any premises situate in or adjoining any street in which a main or service pipe . . . is or shall be laid." There was no definition of premises but Alverstone, L.C.J., having considered the object of the statute, said: "I cannot think that the Legislature meant to apply those compulsory powers to the owner or occupier of bare land when they used the word 'premises' in this section."

The Public Health Act, 1936, while it does not completely define "premises," provides that the expression includes messuages, buildings, lands, easements and hereditaments of any tenure. Recent statutes which define the expression include the Slaughterhouses Act, 1954, "a building or any part thereof and any forecourts, yards, places of storage used in connection therewith" (s. 16), and the Food and Drugs Act, 1955, with a similar definition, adding, however, "in relation to dairies and dairy farms and the trade of dairyman and dairy farmer, any land other than buildings" (s. 55).

Caves

Gardiner v. *Sevenoaks R.D.C., supra*, raised the question whether some artificially formed caves of which the appellant held a fourteen years' lease were "premises" for the purposes of the Celluloid and Cinematograph Film Act, 1922. The statute uses the word freely, s. 1 (1) beginning by enacting that no premises shall be used for any purpose to which the Act applies unless certain information has been given to the local authority, who may order safety measures to be taken. The contention was that "premises," which is left undefined, must be construed as a house or building or something *ejusdem generis* a building; but the caves were fitted with doors and those formed enclosed spaces. Upholding the local magistrates, the Divisional Court held that while an open cave might not be "premises" for the purposes of the Act, one which had been turned into a closed warehouse was.

It may be of interest that Kidderminster County Court has on more than one occasion been called upon to decide the status of certain "cave dwellings," very elaborately fitted out, let and inhabited. See *Horsford* v. *Carnill* (1951), 157 E.G. 243 and 158 E.G. 287, and "A Dwelling-house," *ante*, p. 566.

The Furnished Houses (Rent Control) Act, 1946

In *R.* v. *Adamson* the issue turned on the meaning of "premises" in s. 4 of the above statute (the scope of which

has been drastically reduced by the Rent Act, 1957). In 1949 the tenant of three partly furnished rooms had " referred the contract " to a rent tribunal, which had reduced the weekly rent of £2 10s. to £2. This was done under s. 2, which does not mention " premises." By s. 3 the local authority has to keep a register containing (subs. (2)) " with regard to any contract under which a rent is payable that has been approved, reduced or increased under the last foregoing section (being a contract relating to premises situated in the area of the local authority), entries of (*a*) the prescribed particulars with regard to the contract ; (*b*) a specification of *the premises* to which the contract relates ; and (*c*) the rent as approved, reduced," etc. And then s. 4 provides that " where the rent payable for any *premises* is entered in the register " it shall not be lawful to require or receive any sum in excess ; and s. 9 makes such requiring and receiving a penal offence.

The appellant had, after the tenant who had referred the contract had gone, redecorated and refurnished the rooms and had let them first at £2 15s. and then at £2 17s. 6d. a week ; the local council prosecuted her under s. 9 and the local county quarter sessions convicted her and fined her £2 on each of twelve counts.

The Court of Appeal, while ordering an absolute discharge, refused to accede to the argument that " premises " meant not merely the bare shell of the rooms but the rooms with the furniture.

" Situated "

The fact that the Minister of Health, when prescribing particulars with regard to the contract and a specification of the premises to which the contract relates (s. 3 (2) (*a*) and (*b*)), clearly took the view that " premises " did not include furniture (see Furnished Houses (Rent Control) Regulations, 1946, Sched. II) would not, of course, support the contention advanced by the prosecution in *R.* v. *Adamson* but, apart from the fact that the appellant could have sought reconsideration on the (admittedly somewhat vague) ground of " change of circumstances " (s. 2 (3)), the " situated in the area " of s. 3 (2) does favour an interpretation limiting " premises " to realty. All the same, one may wonder how the Legislature would have expressed itself if the Act had been made applicable to Scotland, where—very sensibly—premises (in this sense) are called " subjects." R. B.

HERE AND THERE

LOST TRANQUILLITY

A FRIEND whose effective memory goes back before the beginning of the century put forward the theory, the other day, that the decline in tranquillity in the personal atmosphere of English life is due to the disappearance of the working man's cigar. Every Sunday in those far off days the working man, in good employment, would ceremoniously carve the family joint and then after the meal he would sit down quietly and slowly smoke his twopenny cigar, lifted up into a soothing calm, the memory of which lasted him all the week through. This, said my friend (who came from the working classes himself), had a singularly tranquillising effect on the spirit of life. We, to whom that is hearsay, are in no position to judge the validity of his theory. But we do know that, whatever else full employment and the Welfare State may have achieved, they have not produced a calm and contented atmosphere. But, then, the alluring importunities of commercial advertising running parallel to the social philosophy that everyone has an inalienable right to a lovely time here and now because there's so much of everything, are not calculated to create a mood of rooted contentment. On cause and effect one would rather expect a restless spirit of " grab what you can while you can." And that seems to be just what we are getting, to judge by the recent alarming recrudescence of crime, especially crimes of violence and robbery. At least one judge of long experience does not believe that the trouble is entirely psychopathic. " We hear a lot today about psychopathics," said Lord Goddard recently. " As far as I can see, I am a psychopathic myself and so is everyone else. But human nature doesn't change very much. The age-old causes of crime are still there. They are a desire for easy money, greed, passion, lust and cruelty."

CALLOW

YES, of course, there are all those causes, but on top of them all there is also sheer bad temper. We are becoming an edgy, irritable lot. First of all we got angry old broadcasters. Then we became all too conscious of far too many angry, aggressive young dogs that their owners wouldn't or couldn't control. Then came the peevish, angry young men. And now here comes an angry young lord, having a go at the Crown, the Church and the Bench in quick succession with barely time to draw breath, let alone choose his words, and, naturally, he has provoked an angry reaction and one violent breach of the peace. Sir Laurence Dunne at Bow Street was perfectly right (if one may respectfully say so) to impose a fine and a rebuke for that breach of the peace which proved and disproved nothing and settled nothing. Bad manners are contagious and the courts should discourage their spread. Under another set of social conventions, of course, the person lately assaulted would have been " called out " by an expert marksman. That, too, would have proved nothing and disproved nothing but it would have settled something. Anger was then a riskier hobby than now to indulge. In this odd little episode one is struck by the curiously infantile callowness of the thing, the tone of a schoolboy bent on giving his elders " a piece of his mind." One would have thought that by any adult and civilised standards a lady is entitled to be spoken of with courtesy, even if she does happen to be one's Sovereign. And although one knows that the clergy are not particularly popular in angry young circles, it could hardly have done any actual harm to be polite to the Archbishop. Even a burning conviction of the urgency of public criticism in popular language does not make it neccessary to double discourtesy with banality. Cobbett never found it so. The whole point of popular language is that it should be vivid and fresh and new-minted. " Pain in the neck " and " gives me the pip," never particularly apt or vivid figures of speech, were already drearily stale in the dear dead days of the nineteen-twenties. The callowness is again apparent in the curious insensibility of the laws of cause and effect. What result is looked for from pronouncements at that level and in that tone ? Is it really expected that those so addressed will immediately reorient themselves to conform to the idiosyncrasies of the person so addressing them ? And if his judgment is so unsound on an obvious point of cause

and effect, how can it be trusted on wider and deeper matters ? There was once an American judge before whom a young counsel conducted his case with the plainest discourtesy, but to everyone's surprise the judge took no notice. That evening among a party of lawyers he started to tell a story about a dog he once had. Whenever the full moon shone, he said, this dog just barked and barked and barked. He paused. " What happened then ? " they asked. " Oh," said he, " the moon just went on shining."

RICHARD ROE.

RENT ACT PROBLEMS

WE print below a further selection of readers' queries arising under the Rent Act, 1957, and the replies given by our " Points in Practice " Department. We hope to publish further selections at frequent intervals. Readers are cordially invited to submit their problems to the " Points in Practice " Department, " The Solicitors' Journal," 21 Red Lion Street, London, W.C.1, but the following points should be noted :

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet.*

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Decontrolled Premises—SEASIDE BOARDING HOUSE

Q. A landlord lets a house in a seaside town, rateable value £50, to a tenant who, with the landlord's knowledge, and over a considerable number of years, uses the property during the summer months only as a boarding house. Can the tenant claim the protection of Pt. II of the Landlord and Tenant Act, 1954, and, if so, can the landlord at once serve the tenant with six months' notice under this Act or must he wait until April, 1958, before he can serve an effective six months' notice ?

A. In our opinion the tenant can now claim the protection of Pt. II of the Landlord and Tenant Act, 1954, as occupying premises for the purposes of a " business carried on by him or for those and other purposes " (s. 23 (1) of the 1954 Act) since by s. 11 (1) of the Rent Act, 1957, the premises are decontrolled. A boarding house is a business for the purposes of the 1954 Act (see *Ireland* v. *Taylor* [1949] 1 K.B. 300) and it is immaterial that the use as such is seasonal each year. The landlord has apparently acquiesced in the use of the premises as a boarding house and no objection to protection under Pt. II of the 1954 Act can be taken on the grounds of non-consent to the user (s. 23 (4) of the 1954 Act). The standstill period of the 1957 Act does not apply (para. 2 (6) of Sched. IV to the 1957 Act) and whether notice to determine the tenancy under the 1954 Act can be served at once is subject only to the provisions of that Act.

Section 2—NOTICE OF INCREASE : JOINT TENANTS : TRUSTEE LANDLORDS

Q. A notice of increase of rent has been served addressed only to one of two joint tenants, the envelope and the form containing the name of the one joint tenant only. It is beyond dispute that the tenancy is vested in two persons (brother and sister) the names being on the rent book in the handwriting of one trustee landlord who has also managed the property. Does this defect in omitting the name of the second joint tenant invalidate the notice ? The notice is signed by one trustee landlord " For Exors of . . . deceased." It is known that the property is owned by two trustees, but the notice of increase omits any mention of the name or address of the second trustee landlord. Does this defect invalidate the notice ?

A. A notice to quit is valid though given to one only of joint tenants, and we think the rule would be the same in respect of a notice of increase. Joint tenants hold their legal interest as trustees for themselves and a notice to one trustee is notice to all (cf. *Nicholson* v. *Smith* (1882), 22 Ch.D. 640). If the trustee signing the notice acted with the approval and sanction of the other trustee, which in the case of a dispute must be strictly proved, the notice will be good (see *Messeena* v. *Carr* (1870), L.R. 9 Eq. 210 ; *Re Viola's Lease* [1909] 1 Ch. 244).

Schedule I, para. 1—TENANT LIABLE FOR " SOME " REPAIRS

Q. A house in London with a rateable value on 7th November, 1956, of £35 was held for a term of three years from October, 1938, and the tenant has held over. The agreement contained a covenant by the tenant to " keep the internal parts of the premises and all fixtures and fittings thereto in good and tenantable repair and condition and the same in good and tenantable repair and condition deliver up to the landlord at the expiration or sooner determination of the said term (reasonable wear and tear and damage by fire tempest or aircraft excepted)." Is the rent limit twice the gross value on the basis that the tenant is not liable for any repairs at all in the ordinary way (see *Taylor* v. *Webb* [1937] 1 All E.R. 590) ; or do you consider that the tenant is liable for *some* repairs within the meaning of para. 1 (3) of Pt. I of Sched. I to the Act ?

A. Although the " reasonable wear and tear " exception limits considerably the tenant's covenant to repair it is apparent from *Taylor* v. *Webb* that there still remains some obligation to repair, i.e., where the state of disrepair is due to the tenant's unfair or unreasonable user of the premises (*per* Scott, L.J. [1937] 1 All E.R. 590, at p. 598). That being so, we think that the appropriate factor falls to be calculated in accordance with para. 1 (3) of Sched. I.

Schedule IV—NEGOTIATED THREE-YEAR TENANCY : FORM

Q. It seems to us most desirable that the grant of a three-year tenancy in respect of de-controlled premises should be evidenced by a formal tenancy agreement. There are a number of cases, however, where neither the landlord nor the tenant is willing to pay the costs involved. Do you consider it a sufficient compliance with the Act and also practical having regard to the fact that the landlord would naturally wish to provide for re-entry on non-payment of rent, that the matter should be dealt with by exchange of letters ? If so, what about stamp duty ?

A. In our opinion, it is only necessary for the agreement under para. 4 of Sched. IV to the Rent Act, 1957, to comply with the rules normally applicable to an agreement for a lease. If the lease is not to exceed three years, i.e., to comply with para. 4 is one of three years certain, then the agreement may be oral or written (s. 54 of the Law of Property Act, 1925). If it is to exceed three years then a written agreement complying with s. 40 of the Law of Property Act, 1925, would suffice. An exchange of letters referable to each other and containing the necessary particulars would satisfy s. 40, and, in the absence of anything in the agreement to the contrary,

there would be an implied term that the lease would contain the "usual covenants and conditions"—one of which is a right of re-entry for non-payment of rent (*Hampshire* v. *Wickens* (1878), 7 Ch. D. 555). *Vis-à-vis* the landlord, the tenant holding under such an agreement for a lease occupies the same position as regards rights and liabilities as if a formal lease had been executed (*Walsh* v. *Lonsdale* (1882), 21 Ch. D. 9). However, to safeguard his position *vis-à-vis* third parties, the tenant should register his interest as a class C (iv) land charge (s. 10 (1) of the Land Charges Act, 1925). In the case of an exchange of letters the acceptance of the terms should be stamped as if it was a formal lease for the same period at the consideration indicated (s. 75 (1) of the Stamp Act, 1891).

Schedule V—Apportionment of Rateable Value

Q. A property consisting of three floors was purchased in 1952 and the contract contained the following clauses: "The property is sold subject to and with the benefit of the existing tenancies of the first and second floors to Miss *S*. This tenancy is a verbal weekly tenancy and the present rental received in respect thereof, i.e., £1 6s. 6d. inclusive for the first floor and £1 2s. 6d. inclusive for the second floor." The ground floor of the property is occupied by the owner and the house is rated as a whole with a rateable value of £72. It is not known whether there were two separate rent books previous to purchase of the property by the present owner but, since he purchased, the tenant has had only one rent book and, as there have been certain increases in rent due to rates, this rent book now shows the figure of £2 11s. 11d., which, of course, relates to both the first and second floors. The landlord has recently approached the tenant concerning the rateable value and he suggested to her that the rateable value of her two floors should be £47. The tenant replied that she would agree £22 for the first floor and £20 for the top floor. The landlord then said that he would agree a rateable value of £44 for the two floors occupied by the tenant, but the latter then replied with a question, asking "Does that mean £24 and £20?" The landlord wishes to regard the two top floors as being one dwelling-house for the purpose of the Rent Act, 1957, and therefore liable to become freed from control, subject to due notice. On the other hand, the tenant seeks to consider each of the two top floors as a separate dwelling-house for the purpose of the Act, and she appears to maintain that they are to be considered separately. If the tenant's submission is correct, then each floor would be bound to have a rateable value of less than £40 and consequently these two floors would remain in control. What is the legal position, and will this tenancy remain in control or become freed from control?

A. The question does not state, and presumably it is not known, how the original tenancies were made to Miss *S* or why there were apparently two separate tenancies. Since the purchase in 1952 there has been only one rent book, though presumably the rent consists of the two former rents plus permitted increases added together. However, if the two flats are occupied by Miss *S* as one residence, we think that they would be treated as one dwelling-house for the purposes of s. 11 (1) of the Rent Act, 1957 (see, e.g., *Verity* v. *Waring* (1953), 162 E.G. 5). Accordingly, even if each floor had a separate rateable value, these would be added together to give the rateable value of the whole dwelling-house (*Langford Property Co., Ltd.* v. *Goldrich* [1949] 1 K.B. 511), and it would be this combined rateable value which would determine whether s. 11 (1) applies.

Schedule V, para. 6—Proposal to Vary Gross Value "Made" before 1st April, 1957

Q. C is a statutory tenant of one of a block of flats. The flat is separately assessed and the valuation list shows the gross value on 7th November, 1956, to be £40. Prior to 1st April, 1957, the owners of other flats within the block made proposals that the gross values of their flats should be reduced. Their action was successful, and as a result the valuation officer has decided that all the flats in the block (including *C's*) should have their values reduced. *C* has received from the valuation officer a copy of a proposal, dated 21st June, 1957, made by the valuation officer to the local authority, in which it is proposed to reduce the gross value of *C's* flat from £40 to £36. This reduction has now been made. *C* took no action to bring about this reduction, and so far as is known the reduction is due entirely to the decision of the valuation officer, consequent upon the successful appeals by the owners of the adjoining flats. *C* has recently been served with a notice of increase of rent, and his landlord has calculated the rent limit on the gross value of £40 as shown in the valuation list on the relevant date. According to Sched. V, Pt. II, para. 6, to the 1957 Act—

> "If, in pursuance of a proposal made before 1st April, 1957. . . . the gross value . . . is varied . . . the 1956 gross value of a dwelling shall be ascertained by reference to the gross value as so varied."

1. Can *C* rely on the proposals made by owners of the adjoining flats as "a proposal made before 1st April, 1957"? The Act does not refer to a proposal having to be made by any particular person.

2. If not, are we correct in assuming that *C* must henceforth pay rent based on a gross value of £40, whereas the gross value (as varied) is £36 only.

A. The proposal mentioned in para. 6 of Sched. V must be a proposal relating to the actual dwelling concerned. Although the reason for the reduction of the gross value of *C's* flat was the success of the other tenants' proposals, the reduction itself was only made "in pursuance" of the valuation officer's proposal dated 21st June, 1957, and does not date back before 1st April, 1957. It is, therefore, agreed that *C* must pay rent based on £40 gross value which is his gross value for 1956–57, whereas for that year the gross value of the other tenants has been reduced.

Schedule VI, para. 23—Service of Notices

Q. A number of estate agents in our area are sending notices to tenants by ordinary, not registered, post. Having regard to s. 167 of the Housing Act, 1936, which is applied by the Act, do you consider that, in any proceedings taken by a landlord, the tenant could succeed on the technical point that the notice had not been properly served even if he could not deny actually receiving it as might be evidenced by intervening correspondence? Would it make any difference if the tenant marked in such correspondence "without prejudice"?

A. In our opinion, if notices under the Act have actually been received by the tenants no technical objection on the grounds that they were sent by ordinary instead of registered post would be sustainable (see *Sherpley* v. *Manby* [1942] 1 K.B. 217). It would be necessary to prove that the letters had in fact been received. The marking of letters "without prejudice" would only render them inadmissible as evidence if written in the course of negotiations for the settlement of a dispute between the parties.

Mr. M. G. Neal, B.E.M., Official Assignee, Registrar of Companies, Societies and Trade Unions in the Federation of Malaya, has been appointed a Puisne Judge in the Federation of Malaya.

Mr. Mitchell Nevins, solicitor, of Chesterfield, has been appointed clerk to the Chesterfield County Magistrates in succession to Mr. Aubrey J. Cook, who will be retiring in October. Mr. Nevins will also serve as clerk to the Renishaw Magistrates.

BOOKS RECEIVED

Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice. Sixteenth Edition. By BASIL ANTONY HARWOOD, M.A., of the Inner Temple, Barrister-at-Law, a Master of the Supreme Court. pp. xxxvii and (with Index) 534. 1957. London: Stevens & Sons, Ltd. £2 10s. net.

The 1957 Rent Act Simply Explained. By LAURENCE WEBLEY, LL.B., Barrister-at-Law. pp. (with Index) 50. 1957. London: Homefinders (1915), Ltd. 3s. net.

Hart's Introduction to the Law of Local Government and Administration. Sixth Edition. By WILLIAM O. HART, C.M.G., B.C.L., M.A., of Lincoln's Inn, Barrister-at-Law, Clerk of the London County Council. pp. lxiv and (with Index) 806. 1957. London: Butterworth & Co. (Publishers), Ltd. £2 5s. net.

Factory Law. Sixth Edition. By H. SAMUELS, M.A., of the Middle Temple and Northern Circuit, Barrister-at-Law. pp. xxx and (with Index) 734. 1957. London: Stevens & Sons, Ltd. £4 10s. net.

A Source Book of English Law. By A. K. R. KIRALFY, Ph.D., LL.M., of Gray's Inn, Barrister-at-Law. pp. xx and (with Index) 445. 1957. London: Sweet & Maxwell, Ltd. £2 10s. net.

Taylor's Principles and Practice of Medical Jurisprudence. Eleventh Edition. Volume II. Edited by Sir SYDNEY SMITH, C.B.E., LL.D., M.D.(Edin.), F.R.C.P.(Edin.), Hon. M.D. (Louvain), D.P.H., F.R.S.(Edin.), Assisted by KEITH SIMPSON, M.D., Lond. (Path.). pp. viii and (with Index) 647. 1957. London: J. & A. Churchill, Ltd. £4 net.

The Law Relating to Auctioneers and Estate Agents. By D. MACINTYRE, M.A., of Gray's Inn, Barrister-at-Law. pp. xxi and (with Index) 253. 1957. London: Sweet & Maxwell, Ltd. £1 10s. net.

The Rent Act, 1957. By R. E. MEGARRY, Q.C. pp. 39. 1957. London: Reprinted from THE SOLICITORS' JOURNAL. 5s. net.

The Sentence on the Guilty. By CLAUD MULLINS. With an Introduction by the Rt. Hon. Viscount TEMPLEWOOD, G.C.S.I., G.B.E. pp. xiv and (with Index) 70. 1957. Chichester: Justice of the Peace, Ltd. 9s. 6d. net.

The Law Quarterly Review. Index to Volumes 1-72. By PETER ALLSOP, M.A., of Lincoln's Inn, Barrister-at-Law. pp. xii and 326. 1957. London: Stevens & Sons, Ltd. £2 2s. net.

"THE SOLICITORS' JOURNAL," 15th AUGUST, 1857

IN an article entitled "Gentlemen of the Long Robe," THE SOLICITORS' JOURNAL wrote, on the 15th August, 1857: "We were . . . surprised to observe that Lord John Russell in the House of Commons adopted the phrase . . . to designate . . . a class of members who were to enjoy a peculiar privilege. In addition to the twenty-five Members nominated to serve on the Oaths Committee, it was ordered that 'all gentlemen of the long robe members of the House' should have the right to share in its deliberations . . . We understand that precedents can be produced to justify the phrase and perhaps it is not unsuitable for an assembly which delights to employ at least five words whenever reference is made to an individual member. We may add that the expression is not inaptly chosen as a collective epithet for barristers, because it supposes merely the possession of a gown and raises no sort of question of intellectual qualification which can possibly be inconvenient to anybody . . . The number of solicitors holding seats in Parliament will very probably increase, and . . . their presence there is likely to be beneficial to the public, as well as to their professional brethren. We should expect that the solicitors returned to the House of Commons would usually be men of considerable abilities and possessing knowledge and habits of mind likely to be useful in debate and still more in the business of committees . . . We endeavoured when the elections were complete, to present our readers with a list of all members of the legal profession who had been returned to Parliament . . . It is evidently unjustifiable to class a country gentlemen who kept terms thirty years ago at one of the Inns of Court with a man of the same standing who has spent his life in the study and practice of the law. Yet the Squire could, if he pleased, have voted in the Oaths Committee . . ."

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Re Stratton's Deed of Disclaimer; Stratton and Others *v.* Inland Revenue Commissioners, Court of Appeal, 24th, 27th May, and 6th June

Sir,—In the above case it was held that the disclaimer of a life interest attracted estate duty if the person disclaiming died within five years.

Jenkins, L.J., said, however, that s. 45 (2) of the Finance Act, 1940, would probably not apply to a gift on a condition precedent, which the donee was unable or unwilling to fulfil. Seeing, therefore, that it cannot be uncommon for a donee of a gift, who is getting on in years, to wish to stand aside, would it not be well to consider making the gift to *A* for life if he signifies his assent to the gift within a certain time, and if not, to *X*, *Y* and *Z*, and if he does so assent, then to him for life and subject thereto to *X*, *Y* and *Z*?

H. GOVER.

Mawnan Smith, Cornwall.

A revised edition of a booklet explaining the main features of the system of income tax allowances in respect of industrial buildings, including the changes made by the Finance Act, 1956, has been issued by the Board of Inland Revenue. Copies of "Income Tax: Notes on Allowances for Industrial Buildings" (No. 410 (1957)) may be obtained on request at local tax offices.

By arrangement with the Registrar of Restrictive Trading Agreements the *Board of Trade Journal* of 16th August publishes an alphabetical index of the commodities about which there are agreements on the public register. The index is published as it stood at 30th July, 1957, and the *Board of Trade Journal* will issue quarterly a note of additions and amendments. The indexes to the register, one alphabetical as above and one in which the commodities are grouped by classes, may be inspected at the following addresses: Office of the Registrar of Restrictive Trading Agreements, Chancery House, Chancery Lane, London, W.C.2; and 9 Wemyss Place, Edinburgh, 3; or at Chichester House, 64 Chichester Street, Belfast.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

House of Lords

NEGLIGENCE: ACCESS TO HOUSE RENDERED IMPASSABLE BY CONTRACTORS' OPERATIONS: DUTY OF CONTRACTORS

A. C. Billings & Sons, Ltd. *v.* Riden

Viscount Simonds, Lord Reid, Lord Cohen, Lord Keith of Avonholm and Lord Somervell of Harrow. 25th July, 1957

Appeal from the Court of Appeal ([1957] 1 Q.B. 46; 100 SOL. J. 748).

The appellant defendants, a firm of contractors, were engaged in reconstructing the front approach to a house, owned and occupied by Government departments, in which a caretaker and his wife resided. In the course of their work the contractors so obstructed the normal approach to the house through the path and forecourt that it became impassable. Their workmen suggested to the caretaker's wife that persons might go in and out of the house by using the forecourt of the house next door, a route which involved danger as it led through a narrow way between some bushes and the area of that house. The respondent plaintiff, a woman of seventy-one, on a November evening, visited the caretaker and his wife by invitation at 7.30 p.m., using the way through the forecourt next door on the advice of the wife. When leaving the house at 10 p.m. by the same way she fell into the area next door and received severe injuries. In an action against the contractors and the Government departments (as owners and occupiers), Hallett, J., gave judgment for the defendants, holding that in the circumstances none of them had been guilty of any breach of duty towards the plaintiff. The plaintiff appealed from the judgment in favour of the contractors. The Court of Appeal affirmed the decision in favour of the Government departments, but held the contractors liable in damages. Because of the plaintiff's own contributory negligence, the amount of damages was reduced by half. The contractors appealed to the House of Lords.

VISCOUNT SIMONDS said that he agreed with the opinion of Lord Reid that the appeal should be dismissed.

LORD REID said that the main controversy was over the nature and extent of the duty owed by the appellants to the respondent. There was no reason why a contractor who chose to prevent safe access by visitors should be entitled to rely on any speciality in the law of licensor and licensee. The contractors owed a duty to all persons who might be expected lawfully to visit the house. It was the ordinary duty to take such care as, in all the circumstances, was reasonable to ensure that visitors were not exposed to danger by their actions. There might be cases in which warning was an adequate discharge of the duty. There might be another safe and reasonably convenient access only a short distance away, or the situation might be such that, with knowledge of the danger, the visitor could easily and safely avoid it. But in other cases this was not so. For example, the contractors could not say to a doctor on an urgent call, "Now I have shown you the danger and if you choose to go on you do so at your own risk." There was nothing new in this. There was no magic in giving a warning. If the plaintiff knew of the danger, the question was whether it was such that, in the circumstances, no sensible man would have incurred it. If it was not, the fact that the plaintiff voluntarily and knowingly incurred it did not entitle the defendant to escape from liability. The only cases inconsistent with this were *Malone* v. *Laskey* [1907] 2 K.B. 141 and *Ball* v. *London County Council* [1949] 2 K.B. 159 following it. *Malone's* case (*supra*) should be overruled, in so far as it dealt with negligence. The first question was whether the respondent acted reasonably in taking the advice of the caretaker's wife to go the way she did. In considering what a reasonable person would realise or would do in a particular situation, we must have regard to human nature as we know it and if one thinks that, in a particular situation, the great majority of people would have behaved in one way, it would not be right to say that a reasonable man would or should have behaved in a different way. A "reasonable man" did not mean a paragon of circumspection. The respondent was a frequent visitor to the house. It was not unreasonable for her to accept the invitation of the caretaker's wife and follow her directions. If the contractors could disclaim all responsibility for those directions, their position might have been different. But they could not do that. If their workmen had given the caretaker's wife a warning instead of encouragement, she might have insisted that they should lay a safe plank-walk. The next question was whether, if the plaintiff acted reasonably in going in, the fuller knowledge of the route which she gained on the inward journey made it unreasonable for her to try to go out the same way. She would have been wiser to accept the offer of her friend's son to accompany her and there was contributory negligence on her part in not taking enough care. But in seeking to return by the same route she did not act unreasonably or so negligently as to lead to the conclusion that the accident was caused entirely by her own fault. It was sometimes said that when a visitor went on, knowing the risk, the test was whether he was free to choose or acted under some compulsion. But reasonableness was the better test. The accident was caused partly by the danger of the route and partly by the respondent's negligence. The appeal should be dismissed.

The other noble and learned lords agreed in dismissing the appeal. Appeal dismissed.

APPEARANCES: *Fox-Andrews*, Q.C., and *Robert Hutton* (*Gibson & Weldon*, for *Keith Scott & Co.*, Gloucester); *Baker*, Q.C., and *Kempster* (*Syrett & Sons*, for *Ivens, Thompson & Green*, Cheltenham).

[Reported by F. COWPER, Esq., Barrister-at-Law] **[3 W.L.R. 496**

INCOME TAX: SETTLEMENT: REVOCABILITY: "POWER TO DETERMINE SETTLEMENT OR ANY PROVISION THEREOF"

Inland Revenue Commissioners *v.* Saunders

Viscount Simonds, Lord Reid, Lord Cohen, Lord Keith of Avonholm and Lord Somervell of Harrow. 25th July, 1957

Appeal from the Court of Appeal ([1956] Ch. 509; 100 SOL. J. 586).

A settlor made a settlement of £100 for the benefit of a specified class, which included his wife. He later transferred a further £25,000 to the trustees of the settlement, making a total fund of £25,100 which was subject to the trusts of the settlement. By cl. 4 in the settlement it was provided that the trustees might at their absolute discretion pay any part of the capital of the trust funds to any one of the specified class provided the capital should not be reduced below £100. For the year 1951–52 the settlor was assessed under s. 38 (2) of the Finance Act, 1938, to sur-tax on the income from the property comprised in the settlement. Wynn Parry, J., dismissed the settlor's appeal from a decision of the Special Commissioners. The Court of Appeal reversed his decision. The Crown appealed to the House of Lords. The substantial question of law was as to the construction of the words "power . . . to revoke or otherwise determine the settlement or any provision thereof" in s. 38 (1) (*a*) of the Act.

VISCOUNT SIMONDS said that an exercise of the power in cl. 4 during the settlor's life might result in his wife becoming beneficially entitled to a part of the property comprised in the settlement. The single question was whether the power was a power to "revoke or otherwise determine the settlement or any provision thereof." The respondent said that it was not, because there must always be £100 left in the settlement and, so long as it was there, neither the settlement nor any provision thereof could be properly determined. It was not easy to say what was the fair meaning of the relevant words. It was not proper to attribute non-determination to the settlement or any provision thereof because the power itself still subsisted. What was relevant was whether the trusts declared had been determined. The issue was whether the words in the Act were satisfied if a beneficial interest in the settlement was in part determined. A beneficiary for whom £5,000 a year had been provided might say, on finding that it was cut down to £50 a year, that he no longer enjoyed the provision he formerly had. But he would in fact be provided for, though on a less handsome

scale, and it would be a provision of the settlement. The word "revoke" did not include partial revocation, and the word "determine" did not include partial determination. The appeal should be dismissed with costs.

LORD REID and LORD COHEN agreed.

LORD KEITH and LORD SOMERVELL dissented.

Appeal dismissed.

APPEARANCES: *Cross*, Q.C., *Sir Reginald Hills* and *E. B. Stamp* (*Solicitor of Inland Revenue*); *Pennycuick*, Q.C., and *Roderick Watson* (*Henry Pumfrey & Son*).

[Reported by F. COWPER, Esq., Barrister-at-Law] **[3 W.L.R. 474**

INCOME TAX: SETTLEMENT: REVOCABILITY: SETTLOR OUT OF JURISDICTION: INCOME INCLUDED IN SETTLOR'S ASSESSMENT FOR SUR-TAX

Kenmare *v.* Inland Revenue Commissioners

Viscount Simonds, Lord Reid, Lord Cohen, Lord Keith of Avonholm and Lord Somervell of Harrow. 25th July, 1957

Appeal from the Court of Appeal ([1956] Ch. 483; 100 SOL. J. 585).

A settlement of property of a value of some £700,000 was made in Bermuda in 1947 by a settlor at all material times resident out of the United Kingdom. The property settled, certain United Kingdom stocks, shares and securities, was situated in the jurisdiction. By cl. 5: "(*a*) Notwithstanding the trusts hereinbefore declared the trustees if they in their absolute discretion think fit may at any time and from time to time during the lifetime of the settlor . . . declare that any part of the trust fund [not exceeding in any one period of three consecutive years the sum of £60,000] . . . shall thenceforth be held in trust for the settlor absolutely and thereupon the trusts hereinbefore declared concerning the part of the trust fund . . . to which such declaration relates shall forthwith determine and the trustees shall thereupon transfer such part of the trust fund . . . to which such declaration relates to the settlor absolutely . . ." The settlor was assessed to sur-tax under s. 38 (2) of the Finance Act, 1938, in respect of her income under the settlement. The assessment was discharged by the Special Commissioners on the ground that s. 38 had no application to a person resident outside the jurisdiction, and they did not in the circumstances consider whether the settlement contained a power of revocation. The Crown appealed from that decision and Danckwerts, J., held that the settlement contained a power of revocation and that the assessment to sur-tax was properly made on the settlor. The Court of Appeal having upheld this decision, the applicant appealed to the House of Lords. By s. 38 (2): "If . . . the terms of any settlement are such that:—(*a*) any person has or may have power, whether immediately or in the future . . . to revoke or otherwise determine the settlement or any provision thereof; and (*b*) in the event of the exercise of the power, the settlor . . . will or may become beneficially entitled to the whole or any part of the property . . . comprised in the settlement . . . any income arising under the settlement . . . shall be treated as the income of the settlor for that year . . ."

VISCOUNT SIMONDS said that the language of s. 38 and particularly subs. (7) and of s. 41 made it clear beyond all doubt that any settlement, wherever made and whatever foreign element might be imported by the residence of settlor or trustees or the forum of administration, was caught by its provisions if the income arose in the United Kingdom. The next question was: Was the power given by cl. 5 a power within s. 38 (2)? The powers given to the trustees might enable them by successive withdrawals of the trust fund to exhaust it during the settlor's lifetime and thus determine the settlement. It could not be said that the day might not arrive when, the appellant being still living, the trustees would have the power to withdraw the last pound from the trust fund and place it at her disposal. The settlement was within s. 38 (2). The appeal should be dismissed.

The other noble and learned lords concurred. Appeal dismissed.

APPEARANCES: *Talbot*, Q.C., *Bucher*, Q.C., and *Herbert Monroe* (*Theodore Goddard & Co.*); *Cross*, Q.C., *Sir Reginald Hills* and *E. B. Stamp* (*Solicitor of Inland Revenue*).

[Reported by F. COWPER, Esq., Barrister-at-Law] **[3 W.L.R. 461**

Court of Appeal

RATING: WHETHER CONCESSION APPLICABLE TO BURIAL GROUNDS ACQUIRED UNDER ACT OF 1852 APPLICABLE ALSO TO CREMATORIA SO ACQUIRED

Law (Valuation Officer) *v.* Wandsworth Borough Council
Parkin (Valuation Officer) *v.* Camberwell Borough Council

Lord Evershed, M.R., Morris and Pearce, L.JJ. 11th July, 1957

Cases stated by the Lands Tribunal.

The valuation officers appealed against decisions of the Lands Tribunal which gave rating relief to land used by the councils concerned for the purposes of crematoria and ancillary purposes within the curtilage of a cemetery hereditament. The relief was granted on the footing that s. 4 of the Cremation Act, 1902, had extended to land acquired under s. 26 of the Burial Act, 1852, and used for the purposes of a crematorium, the rating concession granted to burial grounds so acquired by s. 15 of the Burial Act, 1855.

LORD EVERSHED, M.R., affirming the decision of the tribunal, said that the land had been acquired under a power to acquire burial grounds which by the Act of 1902 had been extended to permit acquisition for crematoria. Secondly, the land was used for purposes which, by reading s. 4 of the Act of 1902 into the Burial Act, 1855, qualified for the concession.

MORRIS and PEARCE, L.JJ., agreed. Appeals dismissed. Leave to appeal.

APPEARANCES: *Maurice Lyell*, Q.C., and *Patrick Browne* (*Solicitor of Inland Revenue*); *Michael Rowe*, Q.C., and *David Widdicombe* (*R. H. Jerman*, Town Clerk, Wandsworth, in the first appeal; *Sharpe, Pritchard & Co.*, for *S. J. Harvey*, Town Clerk, Camberwell, in the second appeal).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[3 W.L.R. 490**

RAILWAY: MAN KILLED ON LINE: WHETHER "REPAIRING THE PERMANENT WAY"

Cade *v.* British Transport Commission

Hodson, Parker and Ormerod, L.JJ. 15th July, 1957

Appeal from Barry, J.

The plaintiff's husband, a lengthman in the employment of the defendants, was struck and killed by one or other of two passing goods trains while engaged in tightening-up loose fishplate nuts on a railway line. It was daylight at the time and there was clear visibility up or down the lines for about a quarter of a mile. The trains were travelling at about 15 miles per hour and the number of trains going each way was about four an hour. Rule 9 of the Prevention of Accidents Rules, 1902, provides: "with the object of protecting men working singly or in gangs on or near lines of railway, in use for traffic, for the purpose of relaying or repairing the permanent way of such lines, the railway company shall, after the coming into operation of these rules, in all cases where any danger is likely to arise, provide persons or apparatus for the purpose of maintaining a good look-out or for giving warning against any train or engine approaching such men so working." On the occasion in question the deceased was working alone and no look-out had been provided. The widow sued the defendants for damages under the Fatal Accidents Acts, 1846–1908, alleging a breach of statutory duty. Barry, J., dismissed the action.

HODSON, L.J., said that two questions arose on the appeal. First, whether the deceased man was doing work of repair, and secondly, whether he should have been provided with a look-out to warn him of the approach of any trains, because his work was one in which danger was likely to arise. As to the first point the judge was right in coming to the conclusion that the work involved was work of repair. The material words were "relaying and repairing," and the word "repair" had to be construed in its natural and not in any special railway sense. The conclusion which the judge reached followed from the speeches given in the House of Lords in *Berriman* v. *London and North Eastern Railway Co.* [1946] A.C. 278, where, by a majority of three to two, their lordships held that the routine work of oiling signal apparatus was not a work of repair. The obvious inference from the speeches, particularly the speeches of the majority, was that the House would have held that the work in question in the present case was work of repair, and that the court should

follow the guidance of that majority. In *Reilly* v. *British Transport Commission* [1957] 1 W.L.R. 76; *ante*, p. 45, the tightening of crossing bolt nuts was held by Donovan, J., to be work of repair. His analysis of the operation of tightening bolts applied to the present operation. On the second matter, Barry, J., held that this was a case in which no danger was likely to arise and, therefore, the claim failed. The court was entitled to look at the circumstances of the case. The deceased, as a matter of practice, if a nut appeared to be loose, would stoop down and, if it could be tightened with the fingers, he would tighten it with his hand as far as it would go, and then he would stand up and use the long-handled spanner; but there was nothing in that operation which would prevent him, except for a very brief moment, from keeping a look-out ahead and looking after himself. That was the matter which was of salient importance and decisive in the case. The conclusion of Barry, J., on that matter was right, and the appeal, therefore, should be dismissed.

PARKER and ORMEROD, L.JJ., gave judgments to the same effect. Appeal dismissed. Leave to appeal.

APPEARANCES: *F. W. Beney*, Q.C., and *Felix Denny* (*Smith and Hudson*, for *Williamson, Stephenson & Repton*, Hull); *G. S. Waller*, Q.C., and *Alastair Sharp* (*M. H. B. Gilmour*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 947**

Chancery Division

RATING: NURSING COUNCIL: SOCIAL WELFARE

General Nursing Council for England and Wales *v.* St. Marylebone Borough Council

Danckwerts, J. 27th June, 1957

Adjourned summons.

The General Nursing Council for England and Wales took out a summons against the rating authority in whose borough they occupied certain premises to determine whether on the true construction of s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, they formed an organisation mentioned in that subsection.

DANCKWERTS, J., said that he had to decide whether this was a case in which the objects of the organisation were concerned with the advancement of " social welfare." It was not essential that it should be formed ostensibly for the purpose of advancing social welfare; it was sufficient if it was formed with objects the result of which was the advancement of social welfare. The real purpose of the establishment of the Nursing Council was not to raise the professional status of the nurses, but for the purpose of creating a system of registration so as to prevent incompetent nurses being able to victimise the public, and for making sure that the public should receive the services only of competent nurses. That was the establishment of a body for the purpose of benefiting the public and, therefore, for a purpose of social welfare. Accordingly, in the present case the claim of the Nursing Council to be an organisation within the terms of the subsection was established. Declaration accordingly.

APPEARANCES: *G. D. Squibb*, Q.C., and *W. L. Roots* (*Pontifex, Pitt & Co.*); *Geoffrey Cross*, Q.C., and *J. L. Arnold* (*Sharpe, Pritchard & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 941**

RESTRICTIVE TRADE PRACTICE: MOTOR MANUFACTURERS: AGREEMENTS BETWEEN COMPANY AND THEIR DISTRIBUTORS AND DEALERS

***In re* Austin Motor-Car Co., Ltd.'s Agreements**

Upjohn, J. 18th July, 1957

Adjourned summons.

The Austin Motor-car Co., Ltd., which carried on the business of manufacturing motor-cars, had a system of multipartite agreements between itself and its distributors and dealers. These agreements were transformed, in 1956, to bipartite agreements, on the coming into force of the Restrictive Trade Practices Act, 1956, with a view to their being exempted from the provisions requiring the registration of every agreement to which Pt. I of that Act applied. An application was made to the High Court on behalf of the company by summons under s. 13 (2) of the Act, in which a declaration was sought that none of these bipartite agreements was a registrable agreement or arrangement within the meaning of the Act.

UPJOHN, J., said that the Solicitor-General, on behalf of the registrar, submitted that the new agreements with the distributor and with the dealer respectively fell within Pt. I of the Act and were subject to registration. He drew attention to four special features in the case. First, he submitted that until the change attempted in 1956, the real basis of Austins' method of doing the business of selling its cars to the public was by a series of multipartite agreements with its various appointed dealers. Secondly, that in substance there was no evidence of any desire on the part of Austins or any of their dealers to make any change in the way business was done, and the flow of cars sold to the public was still precisely the same. The dealers still remained bound to Austins by the same restrictions as before. Thirdly, that the commercial efficiency of the whole selling organisation depended on the existence of these parallel agreements. Fourthly, the whole pattern of the arrangement involved an acknowledgement on the part of each agent of the terms of the agreement by which every other agent was bound. The whole question was whether there was or was not a mutual contract or arrangement within s. 6 (3) whether enforceable at law or not. To escape the alleviation afforded to the subject by s. 8 (3), some arrangement binding three or more parties must be spelt out of the facts, it being conceded that the conditions of the subsection were otherwise satisfied. Whether enforceable at law or not, an arrangement must at least connote an arrangement whereby the parties to it accepted mutual rights and obligations. Reading the new agreements alone and without reference to the earlier history of the matter, it was clear that each of them fell within the protection afforded by s. 8 (3), and the Solicitor-General did not dispute that. He sought, however, by reference to the four special features mentioned earlier, to alter the proper interpretation and operation of these new agreements and, reading them together, to spell out of them a mutual agreement or arrangement between distributor and dealer. That was not permissible in law. While every agreement must be read in the light of surrounding circumstances, those circumstances could not be invoked to alter the true interpretation of a document, or two or more documents, whose operation was clear and unambiguous. The truth was that Austins, to avoid the consequences of liability to registration, had altered the legal framework of its agreements with its dealers, but those new agreements now defined and regulated the transactions between the parties; multipartite agreements had gone and, as a matter of law, reference to history could not resuscitate them. On the facts, the new agreements contained the whole of the arrangements between the parties, no further or collateral arrangement being alleged. On their true construction they were excepted from the operation of Pt. I of the Act and were not subject to registration. Declaration accordingly.

APPEARANCES: *G. T. Aldous*, Q.C., and *D. C. Johnson-Davies* (*Osmond, Bard & Westbrook*); *Sir Harry Hylton-Foster*, Q.C., S.-G., and *J. R. Cumming-Bruce* (*Treasury Solicitor*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[3 W.L.R. 450**

COMPANY: WINDING UP: FORM OF ORDER

***In re* Hibernian Merchants, Ltd.**

Roxburgh, J. 22nd July, 1957

Petition to wind up.

A company was incorporated in the Republic of Ireland, having a place of business and assets in the United Kingdom. It was an unregistered company within s. 399 (1) of the Companies Act, 1948. On the hearing of a creditors' petition for winding up, it was submitted that the following words should be inserted in the winding-up order: " That the liquidator shall not act in pursuance of the order except for the purpose of getting in the English assets and settling a list of the English creditors without applying to the court for directions."

ROXBURGH, J., said that it was better to trust the Official Receiver to make an application to the court if and when he thought it was desirable rather than fetter him in advance in circumstances about which the court knew very little. In many cases, even if there was a question of a principal and an ancillary jurisdiction, the Official Receiver would not find it difficult to carry out his duties under the Companies Act without any

application to the court, and in such a case the reservation in the order would merely waste money. In other cases, no doubt, it might be extremely difficult, but then it was better to decide what was to be done with the facts in evidence than to decide what was to be done in advance of knowledge of the facts. Therefore, while an order, which did no more than did the order in *In re Commercial Bank of South Australia* (1886), 33 Ch. D. 174, was within the powers of the court, it was not desirable to put any special provision in the winding-up order. The order would be the ordinary order. Order accordingly.

APPEARANCES: *Denys Buckley* (*Solicitor, Commissioners of Customs and Excise*); *Ian Edward Jones* (*Solicitor, Inland Revenue*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [3 W.L.R. 486

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Agriculture (Ladders) Regulations, 1957. (S.I. 1957 No. 1385.) 5d.

Agriculture (Power Take-off) Regulations, 1957. (S.I. 1957 No. 1386.) 5d.

Agriculture (Provision of Goods) (Scotland) Regulations, 1957. (S.I. 1957 No. 1394 (S. 67).) 5d.

Agricultural Goods and Services (Scotland) Scheme, 1957. (S.I. 1957 No. 1395 (S. 68).) 5d.

Air Navigation (Seventh Amendment) Order, 1957. (S.I. 1957 No. 1370.) 5d.

Ancillary Dental Workers Regulations, 1957. (S.I. 1957 No. 1423.) 6d.

Baking Industry Exemption (No. 1) Order, 1957. (S.I. 1957 No. 1338.)

Cinematograph Films (Collection of Levy) Regulations, 1957. (S.I. 1957 No. 1341.) 5d.

Cinematograph Films (Distribution of Levy) Regulations, 1957. (S.I. 1957 No. 1342.) 8d.

Coal-Mining (Subsidence) (Damage Notice) Regulations, 1957. (S.I. 1957 No. 1405.) 5d.

Coal-Mining (Subsidence) (Further Damage) Regulations, 1957. (S.I. 1957 No. 1407.) 5d.

Coal-Mining (Subsidence) (Notice of Uninhabitability) Regulations, 1957. (S.I. 1957 No. 1404.) 5d.

Coal-Mining (Subsidence) (Notice of Works) Regulations, 1957. (S.I. 1957 No. 1406.) 5d.

Consular Conventions (Income Tax) (Federal Republic of Germany) Order, 1957. (S.I. 1957 No. 1369.) 5d.

Consular Conventions (Income Tax) (Italian Republic) Order, 1957. (S.I. 1957 No. 1368.) 5d.

Criminal Justice (Scotland) Act, 1949 (Commencement No. 3) Order, 1957. (S.I. 1957 No. 1360 (C. 13).)

East Surrey Water Order, 1957. (S.I. 1957 No. 1383.) 6d.

Electricity (Central Authority and Area Boards) (Amendment) Regulations, 1957. (S.I. 1957 No. 1382.) 5d.

Draft **Factories** Work in Compressed Air Special Regulations, 1957. 10d.

Foreign Compensation (Poland) (Debts) (Amendment No. 2) Order, 1957. (S.I. 1957 No. 1366.) 5d.

Foreign Compensation (Poland) (Nationalisation Claims) (Amendment No. 2) Order, 1957. (S.I. 1957 No. 1367.) 5d.

Ghana (Appeal to Privy Council) Order in Council, 1957. (S.I. 1957 No. 1361.) 6d.

Goole (Water Charges) Order, 1957. (S.I. 1957 No. 1334.) 5d.

Housing (Payments for Well-Maintained Houses) (Scotland) Order, 1957. (S.I. 1957 No. 1393 (S. 66).) 5d.

Import Duties (Exemptions) (No. 10) Order, 1957. (S.I. 1957 No. 1388.) 5d.

Injury Warrant, 1957. (S.I. 1957 No. 1354.) 5d.

International Organisations (Immunities and Privileges of the International Tin Council) (Amendment) Order, 1957. (S.I. 1957 No. 1365.) 5d.

Isle of Man (Customs) Order, 1957. (S.I. 1957 No. 1359.) 5d.

Isles of Scilly Order, 1957. (S.I. 1957 No. 1315.) 5d.

London Traffic (Prescribed Routes) (Hampstead) Regulations, 1957. (S.I. 1957 No. 1425.)

London Traffic (Prohibition of Waiting) (Windmill Street, Gravesend) Regulations, 1957. (S.I. 1957 No. 1426.) 5d.

Magistrates' Courts Rules, 1957. (S.I. 1957 No. 1429 (L. 18).) 5d.

Management of Patients' Estates (Amendment) Rules, 1957. (S.I. 1957 No. 1402 (L. 16).)

These rules, coming into operation on 1st September, 1957, will enable the Master in Lunacy to make an order dealing with a patient's property worth more than £300 (instead of £100, as at present). without the necessity for the making of a formal application.

Marginal Agricultural Production (Scotland) Scheme, 1957. (S.I. 1957 No. 1396 (S. 69).) 5d.

Merchant Shipping (Certificates of Competency as A.B.) (Barbados) Order, 1957. (S.I. 1957 No. 1371.) 5d.

Merchant Shipping (Safety Convention Countries) (Various) (No. 1) Order, 1957. (S.I. 1957 No. 1372.)

Motor Vehicles (Driving Licences) (Amendment) (No. 2) Regulations, 1957. (S.I. 1957 No. 1391.) 5d.

Motor Vehicles (Driving Licences) (Grouping of Applications) Regulations, 1957. (S.I. 1957 No. 1390.) 5d.

National Health Service (Employers of Mariners Contributions) Regulations, 1957. (S.I. 1957 No. 1327.) 5d.

National Health Service Contributions Act, 1957 (Appointed Day) Order, 1957. (S.I. 1957 No. 1326 (C. 12).)

National Insurance (Annulled Marriages) Regulations, 1957. (S.I. 1957 No. 1392.) 5d.

National Insurance (Claims and Payments) Amendment (No. 2) Regulations, 1957. (S.I. 1957 No. 1357.) 5d.

National Insurance (Determination of Claims and Questions) Amendment Regulations, 1957. (S.I. 1957 No. 1340.) 5d.

National Insurance (Married Women) Amendment Regulations, 1957. (S.I. 1957 No. 1322.) 6d.

National Insurance (New Entrants Transitional) Amendment (No. 2) Provisional Regulations, 1957. (S.I. 1957 No. 1346.) 5d.

National Insurance (Pensions, Existing Beneficiaries and Other Persons) (Transitional) Amendment Regulations, 1957. (S.I. 1957 No. 1333.) 6d.

National Insurance (Pensions, Existing Contributors) (Transitional) Amendment Regulations, 1957. (S.I. 1957 No. 1332.) 7d.

National Insurance (Unemployment and Sickness Benefit) Amendment Regulations, 1957. (S.I. 1957 No. 1319.) 6d.

Newquay and District Water Order, 1957. (S.I. 1957 No. 1408.) 7d.

Nigeria (Constitution) (Amendment) Order in Council, 1957. (S.I. 1957 No. 1363.) 5d.

North West of Doncaster–Wakefield–Bradford–Skipton–Kendal Trunk Road (Clapham By-Pass) Order, 1957. (S.I. 1957 No. 1343.) 5d.

Oil in Navigable Waters (Ship's Equipment) Regulations, 1957. (S.I. 1957 No. 1424.) 5d.

Overseas Food Corporation (Dissolution) Order, 1957. (S.I. 1957 No. 1356.)

Pensioners' Declarations Rules, 1957. (S.I. 1957 No. 1401.) 5d.

Road Traffic Act, 1956 (Commencement No. 5) Order, 1957. (S.I. 1957 No. 1389 (C. 14).)

Spirits Certificates Regulations, 1957. (S.I. 1957 No. 1349.) 5d.

Staffordshire Potteries Water Board (Extension of Time) Order, 1957. (S.I. 1957 No. 1335.)

Stopping up of Highways (County of East Suffolk) (No. 2) Order, 1957. (S.I. 1957 No. 1312.) 5d.

Stopping up of Highways (County of Kent) (No. 14) Order, 1957. (S.I. 1957 No. 1325.) 5d.

Stopping up of Highways (London) (No. 43) Order, 1957. (S.I. 1957 No. 1344.) 5d.

Stopping up of Highways (County of Surrey) (No. 4) Order, 1957. (S.I. 1957 No. 1313.) 5d.

Superannuation (Birmingham Royal Institution for the Blind and Birmingham City Council) Interchange (Amendment) Rules, 1957. (S.I. 1957 No. 1351.) 5d.

Superannuation (G.W.R. Medical Fund Society and Wilts County Council) (Amendment) Rules, 1957. (S.I. 1957 No. 1352.) 5d.

Superannuation (Wisbech Water Works Company and Wisbech and District Water Board) Interchange (Amendment) Rules, 1957. (S.I. 1957 No. 1353.) 5d.

Town and Country Planning (Minerals) (Amendment) Regulations, 1957. (S.I. 1957 No. 1358.) 5d.

Wages Regulation (Sugar Confectionery and Food Preserving) (Amendment) Order, 1957. (S.I. 1957 No. 1387.) 5d.

West African (Appeal to Privy Council) Order in Council, 1957. (S.I. 1957 No. 1362.) 5d.

White Fish Subsidy (United Kingdom) Scheme, 1957. (S.I. 1957 No. 1355.) 7d.

Wool Textile Industry (Export Promotion Levy) Order, 1957. (S.I. 1957 No. 1379.) 7d.

Wool Textile Industry (Scientific Research Levy) Order, 1957. (S.I. 1957 No. 1378.) 7d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

Mr. R. K. COOKE, clerk to the Prescot Magistrates, has been appointed to a similar post at Rotherham.

Mr. REX GEORGE GODDARD has been appointed an Assistant Official Receiver in the Bankruptcy (High Court) Department.

Mr. FREDERICK LEONARD SAGE has been appointed an Assistant Official Receiver for the Bankruptcy District of the County Courts of Aylesbury, Brentford, Chelmsford, Edmonton, Hertford, St. Albans, Southend, Reading, Banbury, Newbury and Oxford.

Personal Notes

Mr. Derek Haworth Booth, solicitor, of Colwyn Bay, Denbighshire, was married on 31st July to Miss Jean Rutter, of Winsford, Cheshire. They will live at Worthing where the bridegroom has taken up a private practice.

Miscellaneous

DEVELOPMENT PLANS

COUNTY BOROUGH OF WOLVERHAMPTON DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were on 31st July, 1957, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the County Borough of Wolverhampton. A certified copy of the proposals as submitted has been deposited for public inspection at the Town Hall, Wolverhampton. The certified copy of the proposals so deposited together with copies or relevant extracts of the plan are available for inspection free of charge by all persons interested at the place mentioned above between the hours of 9.30 a.m. to 12.30 p.m. and 2.30 p.m. to 5 p.m. on Monday to Friday, and 9.30 a.m. to 12 noon on Saturday. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 16th September, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Town Clerk, Town Hall, Wolverhampton, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

GLAMORGAN COUNTY COUNCIL DEVELOPMENT PLAN—AREA NO. 2

The county development plan for Area No. 2 was on 30th July, 1957, submitted to the Minister of Housing and Local Government for approval. The plan relates to land situate within the County of Glamorgan and comprises land within the County Districts of :—

Barry Municipal Borough.
Cowbridge Municipal Borough.
Rhondda Municipal Borough.
Aberdare Urban District.
Caerphilly Urban District.
Gelligaer Urban District.
Llwchwr Urban District.
Mountain Ash Urban District.
Ogmore and Garw Urban District (Abercerdin Ward only).
Penarth Urban District.
Pontypridd Urban District.
Cardiff Rural District.
Cowbridge Rural District (except for the parish of Peterston-super-Montem and part of the parish of Llanharan).
Gower Rural District.
Llantrisant and Llantwit Fardre Rural District.
Neath Rural District (part of the parish of Rhigos only).
Penybont Rural District (parishes of St. Brides Major and Wick only).
Pontardawe Rural District.

A certified copy of the plan as submitted for approval is on deposit for public inspection at the Glamorgan County Hall, Cardiff, and certified copies or extracts of the plan so far as it relates to the undermentioned districts have also been deposited for public inspection at the places named below :—

(*a*) Barry Municipal Borough—Town Hall, Barry.
(*b*) Cowbridge Municipal Borough—Town Hall, Cowbridge.
(*c*) Rhondda Municipal Borough—Municipal Buildings, Pentre.
(*d*) Aberdare Urban District Council—Town Hall, Aberdare.
(*e*) Caerphilly Urban District Council—Council Offices, Caerphilly.
(*f*) Gelligaer Urban District Council—Council Offices, Hengoed.
(*g*) Llwchwr Urban District Council—West Street, Gorseinon.
(*h*) Mountain Ash Urban District Council—Town Hall, Mountain Ash.
(*i*) Ogmore and Garw Urban District Council—Brynmenyn, Nr. Bridgend (except Saturdays).
(*j*) Penarth Urban District Council—West House, Penarth.
(*k*) Pontypridd Urban District Council—Municipal Buildings, Pontypridd.
(*l*) Cardiff Rural District Council—20 Park Place, Cardiff (except between the hours of 1 p.m. and 2 p.m. on weekdays).
(*m*) Cowbridge Rural District Council—Cowbridge.
(*n*) Gower Rural District Council—8 Uplands Crescent, Swansea.
(*o*) Llantrisant and Llantwit Fardre Rural District Council—Council Offices, Danygraig, Llantrisant.
(*p*) Neath Rural District Council—Engineer's Department, Council Offices, Orchard Street, Neath.
(*q*) Penybont Rural District Council—Coity Road, Bridgend.
(*r*) Pontardawe Rural District Council—Council Offices, Pontardawe.

The copies or extracts of the plan so deposited are available for inspection, free of charge, by all persons interested, at the places mentioned above between the hours of 9.30 a.m. and 4.30 p.m. on weekdays and 9.30 a.m. and 11.30 a.m. on Saturdays, unless otherwise stated. Any objections or representation with reference to the plan may be sent in writing to the Under Secretary, Welsh Office, Ministry of Housing and Local Government, Cathays Park, Cardiff, before 12th October, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Clerk of the Glamorgan County Council, County Hall, Cardiff, and will then be entitled to receive notice of the eventual approval of the plan. The documents comprised in and those relating to

the plan are available for sale to members of the public who are interested at the prices enumerated below, viz. :—

Document and Price to Public

Report of Survey, vol. I, The County as a Whole. £1 1s.
Volume 2, Rhondda. 5s.
Remaining vols. 3–11. 2s. 6d. each.
Written Statement, vols. 1–11. 2s. 6d. each.
Written Statement for Designated Areas (which includes maps). 10s. 6d.
County Map, County Programme Map, Town Maps and Programme Maps. 10s. 6d. per sheet.
Supplementary Town Maps (Aberdare and Pontypridd). 10s. 6d. per sheet.

Members of the public wishing to purchase any of these documents are requested to make application therefor to the County Planning Officer, Glamorgan County Hall, Cardiff.

COUNTY OF BUCKINGHAM DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were, on 24th July, 1957, submitted to the Minister of Housing and Local Government. The proposals relate to land within the Borough of Buckingham, the urban districts of Newport Pagnell and Wolverton, and the rural districts of Amersham, Buckingham, Newport Pagnell and Wycombe. The proposals consist of town maps (and in the case of Newport Pagnell a comprehensive development area map) and accompanying maps and documents for Buckingham, Newport Pagnell, Wolverton, Great Missenden, Prestwood and Little Kingshill. A certified copy of the proposals, as submitted, has been deposited for public inspection at the County Hall, Aylesbury. Certified copies of the proposals or certified extracts thereof so far as they relate to the undermentioned town maps have also been deposited for public inspection at the places stated below :—

Buckingham Town Map

Town Hall, Buckingham.
Offices of the Buckingham Rural District Council, School Lane, Buckingham.
North Bucks Area Planning Office, 24 Aylesbury Street, Bletchley.

Newport Pagnell Town Map (and Comprehensive Development Area Map)

Offices of the Newport Pagnell Urban District Council, High Street, Newport Pagnell.
Offices of the Newport Pagnell Rural District Council, 7 Station Road, Newport Pagnell.
North Bucks Area Planning Office, 24 Aylesbury Street, Bletchley.

Note : The Comprehensive Development Area Map is available for inspection at the offices of the Newport Pagnell Urban District Council and the North Bucks Area Planning Office only.

Wolverton Town Map

Offices of the Wolverton Urban District Council, Market Square, Stony Stratford.
Offices of the Newport Pagnell Rural District Council, 7 Station Road, Newport Pagnell.
North Bucks Area Planning Office, 24 Aylesbury Street, Bletchley.

Great Missenden, Prestwood and Little Kingshill Town Map

South-East Bucks Area Planning Sub-Office, Elmodesham House, High Street, Amersham.
South-East Bucks Area Planning Office, Ravens-Wood, Windsor Road, Slough.
Offices of the Amersham Rural District Council, Elmodesham House, High Street, Amersham.
Offices of the Wycombe Rural District Council, 17 High Street, High Wycombe.

The copies or extracts of the proposals so deposited, together with copies or relevant extracts of the plan, are available for inspection, free of charge, by all persons interested, at the places mentioned above between the hours of 9.30 a.m. and 4.30 p.m. on Mondays to Fridays, and 9.30 a.m. to 12 noon on Saturdays.

Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 30th September, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Clerk of the Bucks County Council, County Hall, Aylesbury, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

Wills and Bequests

Mr. John Riley Farrar, solicitor, of Halifax, left £3,955 (£3,145 net).

Mr. J. Hartsop Lees, solicitor, of Westmorland, left £43,532 net.

CASES REPORTED IN VOL. 101

6th July to 17th August, 1957

For cases reported up to and including 29th June, see Interim Index

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